Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. 75-1832

ERNEST F. MITCHELL, JR., and ROSE L. MITCHELL,
Petitioners

vs.

FORD MOTOR COMPANY, A Corporation,
Respondent

MOTION FOR CERTIFICATION OF QUESTION OF LAW
TO THE NEW HAMPSHIRE SUPREME COURT
PURSUANT TO RULE 20
OF THE NEW HAMPSHIRE SUPREME COURT RULES

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NOW COME the Petitioners, Ernest F. Mitchell, Jr., and Rose L. Mitchell, in the above-entitled Petition for a Writ of Certiorari and, without waiving any matters set forth in the Petition for Certiorari, respectfully move that the Supreme Court of the United States certify to the New Hampshire Supreme Court under Rule 20 of the Rules of the New Hampshire Supreme Court the question of law of whether the decision of the Court of Appeals for the First Circuit reported in Fed. 2d , (1976) conflicts with the law of the State of New Hampshire on the burden of proof and sufficiency of the evidence to justify a jury verdict, said certification order to be substantially in accordance with the proposed order attached hereto and marked "Appendix A"; and the Petitioners specifically assign as reasons for said Motion, the following:

1. The Court of Appeals for the First Circuit has reversed jury verdicts which were favorable to the Petitioners using its

own standard of the level of evidence necessary to justify the verdicts. Unquestionably, the standards of burden of proof and sufficiency of evidence under New Hampshire law would hold that the verdicts are justified.

2. The New Hampshire Supreme Court is willing to accept questions of law certified to it by the Supreme Court of the United States. The material portions of Rule 20 of the Rules of the Supreme Court of New Hampshire which outline the procedure for certification of questions of law are attached hereto and marked "Appendix B".

3. The Petitioners had filed a motion requesting that the Court of Appeals for the First Circuit certify to the New Hampshire Supreme Court the question of the state law relating to this case but the Court of Appeals denied the motion.

4. There should be no difficulty in the certification of the question of law and in the certification of the record to the New Hampshire Supreme Court for a decision on the relatively simple facts of this case.

5. Certification of the question of law to the New Hampshire Supreme Court will facilitate the disposition of the issues in this case and save important time for the Supreme Court of the United States.

6. After the certification order is made, counsel for the parties can file appropriate pleadings with the New Hampshire Supreme Court under the liberal New Hampshire procedures in order to provide the New Hampshire Court with appropriate records which either party may feel is necessary in answering the question certified.

7. A decision from the New Hampshire Supreme Court on the question of law in this case will clearly reveal the conflict between the law of the State of New Hampshire and the Federal law relative to the level of evidence needed to submit this case to a Jury.

8. Once the New Hampshire Supreme Court has ruled on the

question of law certified, the Supreme Court of the United States can then rule on the important Federal questions in this case, namely: (1) In diversity of citizenship cases, can the Federal Court apply its own principles of burden of proof and sufficiency of the evidence, or must the State standards relating thereto be applied; and (2) What weight should be given by the Court of Appeals as to interpretations of local law made by the District Court Judge.

Ernest F. Mitchell, Jr., and Rose L. Mitchell

By Their Attorneys

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APPENDIX A

CERTIFICATION ORDER PURSUANT TO RULE 20 OF THE NEW HAMPSHIRE SUPREME COURT RULES

This case involves a Petition before the Supreme Court of the United States for a Writ of Certiorari to the Court of Appeals for the First Circuit in which an issue of the law of the State of New Hampshire has been raised which may be determinative of the case.

Diversity of citizenship civil jury cases were plead, proved and submitted to a Jury in the United States District Court for the District of New Hampshire involving a common law claim for damages for personal injuries because of the negligent design of a product. The Jury returned verdicts for the Petitioners, Mr. and Mrs. Mitchell. The Judge of the United States District Court for the District of New Hampshire approved the verdicts and denied various motions of the Respondent, Ford Motor Company. Ford Motor Company appealed to the United States Court f Appeals for the First Circuit. The Court of Appeals reversed and ordered judgment for the Respondent, Ford Motor Company. The opinion of the Court of Appeals is reported in F 2d (1976).

There do not appear to be any precedents in the decisions of the New Hampshire Supreme Court which would control the issue decided by the Court of Appeals for the First Circuit in this case.

The question certified is as follows:

Does the decision of the Court of Appeals for the First Circuit reported in F 2d (1976) conflict with the law of the State of New Hampshire on the burden of proof and the sufficiency of evidence to justify a jury verdict?

Counsel for Mr. and Mrs. Mitchell, the Petitioners, claims that the New Hampshire Supreme Court would rule that the evidence is sufficient to support the jury finding of liability.

Counsel has argued that the decision of the Court of Appeals is based on a ruling by the Court of Appeals that as a matter of law there had been neglect of maintenance of the product. Counsel has pointed out that although Mr. Mitchell testified that he was not aware of any repairs or adjustments to the handbrake in the truck during the year of his corporation's ownership of the truck before the accident, there was evidence that the brakes had been checked and inspected as required by State law. There was also evidence that the truck had been serviced by a Ford garage on at least two occasions and was regularly serviced by the foreman of Mr. Mitchell's company. Mr. Mitchell also testified that he did not encounter any problems with the brake before the accident. The Petitioners' experts testified that because the handbrake lever was shorter than the level of the driver's seat, application of the brake was awkward. The Petitioners' experts testified that the defective design resulting in awkward application of the handbrake caused Mr. Mitchell's inability to fully apply the brake in the circumstances of the accident which caused Mr. Mitchell's injuries. At the trial, by agreement of counsel, the jury was permitted to view the scene of the accident and the interior and exterior of the actual truck involved in the accident. Also, during the trial the jury viewed motion picture films of the application of the handbrake.

The Court of Appeals for the First Circuit has set forth in its opinion the facts upon which it relied in reaching its decision to reverse the judgment of the District Court. Further facts are found in the records of the trial which are on file with the Supreme Court of the United States.

Counsel for the parties shall file with the New Hampshire Supreme Court appropriate pleadings or stipulations in order to assist that Court in determining the portions of the records that may be necessary in answering the question certified. The records required by the New Hampshire Supreme Court will be filed with that Court with this certification order.

APPENDIX B

NEW HAMPSHIRE SUPREME COURT RULES, RULE 20

"20. This court may answer questions of law certified to it by the Supreme Court of the United States, a court of appeals of the United States, or of the District of Columbia, or a United States district court when requested by the certifying court if there are involved in any proceeding before it questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of this court.

This rule may be invoked by an order of any of the courts referred to in paragraph 1 upon that court's own motion or upon the motion of any party to the cause.

A certification order shall set forth

(1) the questions of law to be answered; and

(2) a statement of all facts relevant to the questions certified and showing fully the nature of the controversy in which the questions arose.

The certification orders shall be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to this court by the clerk of the certifying court under its official seal. This court may require the original or copies of all or of any portion of the record before the certifying court to be filed with the certification order, if, in the opinion of this court, the record or portion thereof may be necessary in answering the questions.

Fees and costs shall be the same as in civil appeals docketed before this court and shall be equally divided between the parties unless otherwise ordered by the certifying court in its order of certification.

Proceedings in this court shall be those provided in these rules or statutes governing briefs and arguments.

The written opinion of this court stating the law governing the questions certified shall be sent by the clerk under the seal of this court to the certifying court and to the parties . . ."

" . . .This rule shall be so construed as to effectuate its general purpose to make uniform the law of those states which adopt it; or enact a uniform certification statute.

This rule may be cited as the Uniform Certification of Questions of Law Rule."